

Drug Enforcement Administration, Justice

§ 1316.52

DEAR SIR: Please take notice that _____ (Name of person) will appear in the matter of: _____

(Identification of the proceeding).

(A) (State with particularity the interest of the person in the proceeding.)

(B) (State with particularity the objections or issues, if any, concerning which the person desires to be heard.)

(C) (State briefly the position of the person with regard to the particular objections or issues.)

All notices to be sent pursuant to this appearance should be addressed to:

(Name)

(Street address)

(City and State)

Respectfully yours,

(Signature of person)

[36 FR 7820, Apr. 24, 1971, as amended at 36 FR 13387, July 21, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 40 FR 57210, Dec. 8, 1975]

§ 1316.49 Waiver of hearing.

Any person entitled to a hearing may, within the period permitted for filing a request for hearing or notice of appearance, waive of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

§ 1316.50 Appearance; representation; authorization.

Any person entitled to appear in a hearing may appear in person or by a representative in any proceeding or hearing and may be heard with respect to matters relevant to the issues under consideration. A representative must either be an employee of the person or an attorney at law who is a member of the bar, in good standing, of any State, territory, or the District of Columbia,

and admitted to practice before the highest court of that jurisdiction. Any representative may be required by the Administrator or the presiding officer to present a notarized power of attorney showing his authority to act in such representative capacity and/or an affidavit or certificate of admission to practice.

[36 FR 7820, Apr. 24, 1971, as amended at 36 FR 13387, July 21, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973]

§ 1316.51 Conduct of hearing and parties; ex parte communications.

(a) Hearings shall be conducted in an informal but orderly manner in accordance with law and the directions of the presiding officer.

(b) Participants in any hearing and their representatives, whether or not members of the bar, shall conduct themselves in accordance with judicial standards of practice and ethics and the directions of the presiding officer. Refusal to comply with this section shall constitute grounds for immediate exclusion from any hearing.

(c) If any official of the Administration is contacted by any individual in private or public life concerning any substantive matter which is the subject of any hearing, at any time after the date on which the proceedings commence, the official who is contacted shall prepare a memorandum setting forth the substance of the conversation and shall file this memorandum in the appropriate public docket file. The presiding officer and employees of the Administration shall comply with the requirements of 5 U.S.C. 554(d) regarding ex parte communications and participation in any hearing.

§ 1316.52 Presiding officer.

A presiding officer, designated by the Administrator, shall preside over all hearings. The functions of the presiding officer shall commence upon his designation and terminate upon the certification of the record to the Administrator. The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

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(a) Arrange and change the date, time, and place of hearings (other than the time and place prescribed in § 1301.56) and prehearing conferences and issue notice thereof.

(b) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing.

(c) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties.

(d) Sign and issue subpoenas to compel the attendance of witnesses and the production of documents and materials to the extent necessary to conduct administrative hearings pending before him.

(e) Examine witnesses and direct witnesses to testify.

(f) Receive, rule on, exclude, or limit evidence.

(g) Rule on procedural items pending before him.

(h) Take any action permitted to the presiding officer as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

[36 FR 7820, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 42 FR 57457, Nov. 3, 1977; 62 FR 13970, Mar. 24, 1997]

§ 1316.53 Time and place of hearing.

The hearing will commence at the place and time designated in the notice of hearing published in the FEDERAL REGISTER but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1316.54 Prehearing conference.

The presiding officer on his own motion, or on the motion of any party for good cause shown, may direct all parties to appear at a specified time and place for a conference for:

(a) The simplification of the issues.

(b) The possibility of obtaining stipulations, admission of facts, and documents.

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(c) The possibility of limiting the number of expert witnesses.

(d) The identification and, if practicable, the scheduling of all witnesses to be called.

(e) The advance submission at the prehearing conference of all documentary evidence and affidavits to be marked for identification.

(f) Such other matters as may aid in the expeditious disposition of the hearing.

§ 1316.55 Prehearing ruling.

The presiding officer may have the prehearing conference reported verbatim and shall make a ruling reciting the action taken at the conference, the agreements made by the parties, the schedule of witnesses, and a statement of the issues for hearing. Such ruling shall control the subsequent course of the hearing unless modified by a subsequent ruling.

§ 1316.56 Burden of proof.

At any hearing, the proponent for the issuance, amendment, or repeal of any rule shall have the burden of proof.

§ 1316.57 Submission of documentary evidence and affidavits and identification of witnesses subsequent to prehearing conference.

All documentary evidence and affidavits not submitted and all witnesses not identified at the prehearing conference shall be submitted or identified to the presiding officer as soon as possible, with a showing that the offering party had good cause for failing to so submit or identify at the prehearing conference. If the presiding officer determines that good cause does exist, the documents or affidavits shall be submitted or witnesses identified to all parties sufficiently in advance of the offer of such documents or affidavits or witnesses at the hearing to avoid prejudice or surprise to the other parties. If the presiding officer determines that good cause does not exist, he may refuse to admit as evidence such documents or affidavits or the testimony of such witnesses.